

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

PREMIER SELLING TECHNOLOGIES;
PREMIER SELLING TECHNOLOGIES,
INC.; PREMIER SELLING
TECHNOLOGIES CORPORATION;
BILLING SYSTEMS CORP.; MARK E.
VALENTINE; CODY JERY ALLAN
ALTIZER a/k/a CODY ALLAN; ROBERT
ROMERO; and DOES 1-20,

Defendants.

Case No. 2:15-cv-463

COMPLAINT FOR DAMAGES
AND EQUITABLE RELIEF

Plaintiff Microsoft Corporation (“Microsoft”) files this Complaint against Defendants Premier Selling Technologies, Premier Selling Technologies, Inc., Premier Selling Technologies Corp., Billing Systems Corp., Mark E. Valentine, Cody Jery Allan Altizer a/k/a Cody Allan, Robert Romero, and Does 1-20 (collectively, “Defendants”), alleging as follows:

I. INTRODUCTION

1. This is an action for racketeering, fraud, civil conspiracy, contributory copyright infringement, unfair competition and false advertising, breach of contract, the imposition of a constructive trust, and an accounting of Defendants’ ill-gotten gains.

1 2. As described more fully below, Defendants are actively engaged in a scheme
2 whereby they fraudulently acquire product activation keys for Microsoft software and then
3 unlawfully sell those keys, along with a download link to the software, to unsuspecting
4 consumers who are not licensed or authorized to use the fraudulently obtained product keys or
5 the Microsoft software improperly activated with such keys. In order to perpetrate their
6 fraudulent scheme, Defendants registered to become a Microsoft Authorized Educational
7 Reseller (“AER”), falsely claiming that they are a software reseller to academic institutions.

8 3. In their capacity as an AER, Defendants falsely assume the identity of various
9 Canadian schools to create Academic Open Agreements for Microsoft software purportedly on
10 behalf of the schools. On information and belief, the schools have no knowledge that the
11 Defendants have entered agreements with Microsoft under their names and Defendants have
12 not supplied the schools with any product keys or software. Instead, Defendants, acting as the
13 purported administrator of the accounts, have misappropriated nearly one thousand product
14 keys provided by Microsoft for the schools and are selling them to unsuspecting consumers
15 unconnected with the schools through a variety of Defendant-controlled websites. On these
16 websites, Defendants falsely represent that the advertised software is licensed for general
17 commercial use and display, without authorization, Microsoft trademarks to deceive consumers
18 into believing the software is legally licensed and authorized by Microsoft for commercial sale.

19 4. The product keys misappropriated by the defendants have been used for
20 unauthorized software installations on over twenty thousand different devices in sixty
21 countries. The unlicensed software has a retail value of over \$7.8 million.

22 5. In furtherance of their fraudulent scheme, as further described below,
23 Defendants created a web of entities to conceal their identities and their illicit proceeds from
24 attachment and seizure. Defendants’ methods include, but are not limited to, the use of
25 offshore merchant accounts and web domains registered to fictitious addresses. On information
26 and belief, Defendants have also placed personal assets, including personal residences and
27 vehicles, under the names of business entities created to shield Defendants’ assets from

1 prospective plaintiffs and creditors. Several of the Defendants are also using aliases and cannot
2 be located at any known address.

3 II. PARTIES

4 6. Microsoft is a Washington corporation with its principal place of business in
5 Redmond, Washington. Microsoft develops, markets, distributes, and licenses computer
6 software, among other products and services.

7 7. On information and belief, Defendant Premier Selling Technologies, Inc. is a
8 Canadian corporation formed on May 3, 2011, in Ontario, Canada. On information and belief,
9 Premier Selling Technologies, Inc., along with Defendants Premier Selling Technologies and
10 Premier Selling Technologies Corp. (collectively "PST") are aliases and alter egos for each
11 other and for the same business entity. On information and belief, PST has utilized various
12 websites and domain names to engage in and further the unlawful acts alleged herein, including
13 without limitation, premiersellingtechnologies.org, amazingtechdeals.net,
14 softwaresupplysource.com, advantageittech.com, softwaresupporthub.com,
15 billingsecurecenter.com, and billing-secure-server.com.

16 8. On information and belief, Defendant Billing Systems Corp. is an unregistered
17 business entity operating in Sarasota, Florida. On information and belief, Billing Systems
18 Corp. is an entity owned by, operated by, or otherwise under the substantial control of the other
19 Defendants identified herein. On information and belief, Defendant Billing Systems Corp.
20 operates and conducts business through various websites and domain names, including without
21 limitation, billing-secure-server.com.

22 9. On information and belief, Defendant Mark E. Valentine first incorporated PST
23 and was its first director. On information and belief, Defendant Valentine continues to own
24 and/or substantially control PST. On information and belief, Defendant Valentine is a resident
25 of Ontario, Canada.

26 10. On information and belief, Defendant Cody Jerry Allan Altizer a/k/a Cory Allen
27 is a person participating in and/or supervising the activities of PST with respect to the unlawful

1 conduct alleged herein. On information and belief, Defendant Altizer is a Canadian citizen and
 2 resident of Ontario, Canada.

3 11. On information and belief, Defendant Robert Romero is a person participating in
 4 and/or supervising the activities of PST with respect to the unlawful conduct alleged herein.
 5 On information and belief, Defendant Romero is a resident of Ontario, Canada.

6 12. The true identities of Does 1-20 are presently unknown to Microsoft. On
 7 information and belief, Does 1-20 aided, caused, directed, supervised, contributed to, conspired
 8 to commit, or otherwise furthered the unlawful conduct alleged herein, including helping to
 9 create PST and its affiliated websites and payment services.

10 13. On information and belief, each and all of the above named Defendants
 11 conspired with one another, personally participated in, and/or had the right and ability to
 12 supervise, direct, and control the unlawful conduct alleged herein, and derived a direct financial
 13 benefit from that unlawful conduct. Each and all of the Defendants are therefore subject to
 14 liability for the unlawful conduct alleged herein under principles of secondary liability,
 15 including without limitation, respondeat superior, vicarious liability, and/or contributory
 16 infringement.

17 **III. JURISDICTION & VENUE**

18 14. The Court has subject matter jurisdiction over Microsoft's claims for
 19 racketeering, contributory copyright infringement, unfair competition and false advertising, and
 20 accounting claims pursuant to 15 U.S.C. § 1125, 17 U.S.C. § 501, 18 U.S.C. § 1964, and
 21 28 U.S.C. §§ 1331 and 1338(a). The Court has subject matter jurisdiction over Microsoft's
 22 other claims pursuant to 28 U.S.C. § 1367(a). The Court also has subject matter jurisdiction
 23 over all claims under 28 U.S.C. § 1332 because this action is between a citizen of the United
 24 States and subjects of foreign states—including without limitation, Canada—and the matter in
 25 controversy exceeds \$75,000, exclusive of interest and costs.

26 15. The Court has personal jurisdiction over Defendants because Defendants
 27 consented to jurisdiction. Specifically, PST—acting through and in concert with the other

Defendants—entered into the Microsoft Partner Network Agreement with Microsoft. In section 14(c)(1) of that agreement, the parties expressly consented to exclusive jurisdiction and venue in this Court for all disputes in which federal subject-matter jurisdiction exists.

16. The Court also has personal jurisdiction over Defendants because they purposefully directed their unlawful activities at Washington, and Microsoft's claims arise from those activities. Defendants expressly aimed their conduct at Washington because they (1) had actual or constructive knowledge of Microsoft's intellectual property rights (including Microsoft's registered copyrights and trademarks) and Microsoft's residence in Washington; (2) acted, at a minimum, with willful blindness to, or in reckless disregard of, Microsoft's rights; and (3) knew or should have known that their conduct would cause harm to Microsoft in Washington. *See Wash. Shoe Co. v. A-Z Sporting Goods, Inc.*, 704 F.3d 668 (9th Cir. 2012). Further, personal jurisdiction exists because Defendants maintain an interactive website, through which they advertise to consumers throughout the United States and through which consumers, including Washington consumers, can purchase products and services.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(a) because Defendants are subject to personal jurisdiction in the Western District of Washington. *See Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124 (9th Cir. 2010).

18. Pursuant to Local Civil Rule 3(d), intra-district assignment to the Seattle Division is proper because the claims arose in this Division, where (a) Microsoft resides, (b) the injuries giving rise to suit occurred, and (c) Defendants directed their unlawful conduct.

IV. FACTS COMMON TO ALL CLAIMS

A. Microsoft's Academic Volume Licensing

19. Microsoft's long-established Academic Volume Licensing programs provide discounted software to students, educational institutions, libraries, and museums. The academic programs were created to provide students, educators and other qualified institutions with discounted Microsoft software for anytime, anywhere learning with the latest

1 technologies, contributing to enriched learning experiences for millions of qualified users
2 around the world.

3 20. Microsoft licenses academic edition software through education reseller partners
4 that are authorized to work with educational organization to buy licenses through Academic
5 Volume Licensing agreements. Microsoft's reseller partners become eligible to buy academic
6 licenses for academic users through Microsoft's Authorized Educational Reseller (AER)
7 program. The AER program allows entities to register with Microsoft to become AERs of
8 Microsoft software, entitling them to purchase Academic Edition software from Microsoft or
9 its distributors at significant discounts and resell the software to Qualified Educational Users
10 ("QEUs"). QEUs are a category of eligible users defined by the AER program and do not
11 include general consumer or commercial users.

12 21. Microsoft and its distributors only accept orders for Academic Edition software
13 from resellers if those resellers are enrolled in the AER program. Because of the substantial
14 discounts Microsoft offers to the academic community, the AER program is designed and
15 intended to safeguard against the unauthorized resale of Academic Edition software to non-
16 QEUs.

17 22. To become an AER, a company must become a member of the Microsoft
18 Partner Network ("MPN"), complete and pass an online testing module entitled "Academic
19 Volume Licensing," complete an online application form, and accept the terms of the Microsoft
20 AER Agreement.

21 **B. Defendants' Fraudulent Scheme**

22 23. On May 1, 2014, PST enrolled in the AER program. It accepted the terms of the
23 Microsoft MPN Agreement and the Microsoft AER Agreement (the "Reseller Agreements"),
24 and downloaded its AER Authorization Certificate. PST listed Romero as its primary point of
25 contact on its AER and MPN applications.

26 24. Pursuant to the Reseller Agreements, PST agreed to various limits on its use of
27 certain of Microsoft's trademarks, software, and other products. PST further agreed to strictly

1 limit the distribution of Microsoft's Academic Edition software to QEU's for their use. As an
2 AER, PST is responsible for validating whether its prospective customers are QEU's and for
3 ensuring that any Microsoft software it resells to those QEU's will only be used by the
4 purchasing entity.

5 25. Pursuant to the Reseller Agreements, PST also agreed not to engage or
6 participate in any unauthorized manufacture, duplication, delivery, transfer, or use of
7 counterfeit, pirated, unlicensed, or illegal Microsoft software and to enforce strong internal
8 controls to prevent its employees from doing the same. PST further agreed to comply with
9 applicable terms relating to the use of any Microsoft trademarks, software, and other products,
10 and to only supply original, licensed Microsoft software to its customers. PST agreed not to
11 otherwise infringe any of Microsoft's intellectual property rights.

12 26. On information and belief, PST entered into the Reseller Agreements for the
13 sole and specific purpose of accessing Microsoft product keys for commercial resale and never
14 intended to provide software or associated product keys to QEU's. Rather, PST immediately
15 engaged, and continues to engage, in a fraudulent scheme whereby it falsely assumes the
16 identity of various Canadian schools that have no knowledge of PST's activities, creates
17 Academic Open Agreements that purport to be for such schools, and then misappropriates the
18 product keys assigned to those agreements for commercial sale.

19 27. For each fraudulent Academic Open Agreement created by PST—purportedly
20 on behalf of a QEU—and for each Microsoft software product licensed to that QEU, Microsoft
21 issued unique volume license product keys for use only by that QEU. These product keys are
22 for the activation of a variety of Microsoft software—including Microsoft Windows 8.1,
23 Windows 8, and Windows 7, Office 2013, and Office 2010—depending on the software
24 purchased by the alleged QEU.

25 28. Beginning in or about May 9, 2014, PST created 263 Academic Open
26 Agreements, purportedly for schools in Canada, under which licenses for over 1,300 software
27 installations were purchased. Product keys were assigned to these Agreements to enable the

1 schools to activate the licensed software. The product keys were stored in accounts registered
2 to the schools as the purported licensees under the agreements. PST accessed these accounts as
3 the purported administrator of the accounts and misappropriated the product keys for
4 commercial distribution. The product keys have been used to activate Microsoft software
5 valued at approximately \$7.9 million on over 20,000 different devices in sixty countries.

6 29. Defendants set up a network of domain names and websites to sell the
7 misappropriated product keys to unsuspecting third party consumers. These domain names and
8 websites include premiersellingtechnologies.org, amazingtechdeals.net,
9 softwaresupplysource.com, and advantageittech.com. Three of these websites—
10 premiersellingtechnologies.org, amazingtechdeals.net, and softwaresupplysource.com—direct
11 purchasers to softwaresupporthub.com to obtain product keys and find download links for the
12 unauthorized and unlicensed Microsoft software.

13 30. Each of Defendants' websites falsely purports to sell licensed Microsoft
14 software, deceiving unsuspecting third-party consumers into believing they are acquiring a
15 properly licensed copy of the product. However, because the product keys are only licensed to
16 specific academic institutions under the terms of the Academic Open license to which they
17 correspond, the download and installation of Microsoft's software by these unsuspecting third-
18 party consumers constitutes the unlawful copying of unlicensed Microsoft's software, thereby
19 infringing Microsoft's intellectual property rights.

20 31. Each of Defendants' websites displays various Microsoft trademarks and service
21 marks in furtherance of Defendants' scheme and in connection with the sale of unlicensed
22 Microsoft software. Defendants are not authorized to use these trademarks or service marks in
23 the manner in which they are being used.

24 32. On information and belief, Defendants have also established one or more credit
25 card processing entities, using the domain names billingsecurecenter.com and billing-secure-
26 server.com. On information and belief, Defendants use these credit card processing entities to
27 collect payment for the software purchased by unsuspecting third party consumers through

1 Defendants' websites: premiersellingtechnologies.org, amazingtechdeals.net, and
2 softwaresupplysource.com.

3 33. Defendants' websites are devoid of identifiable names or true addresses. The
4 Defendants appear to communicate with customers and potential customers exclusively via the
5 websites and/or by e-mail without revealing their true identities or locations. For most of
6 Defendants' domain name registrations, Defendants provided names and addresses that are
7 incomplete or erroneous. Others are protected by privacy services that obscure their identities.

8 **C. Microsoft's Test Purchases from PST**

9 34. Because the products keys are unique to each QEU and Microsoft product, users
10 of software create a record with Microsoft when the software is activated. In one instance, for
11 example, a single Windows 7 product key assigned to one of the purported Canadian QEUs
12 under one of Defendants' fraudulent Academic Open licenses has been used to activate
13 software on 100 different devices in nine countries, including activations on 68 different
14 devices in the United States. Microsoft's records show an additional 44 attempted, but
15 unsuccessful, activations. A single Office Professional Plus 2013 product key assigned to a
16 different purported Canadian QEU under one of Defendants' fraudulent Academic Open
17 Agreements has been used to activate software on 55 different devices in four different
18 countries, including 50 activations in the United States.

19 35. At various times in and around December 2014, an outside investigator ("OI")
20 for Microsoft purchased Microsoft software through premiersellingtechnologies.org,
21 amazingtechdeals.net, softwaresupplysource.com, and advantageittech.com—the websites
22 operated by Defendants. For each of these purchases, either the merchant name for the credit
23 card transaction was "Premier Technologies" of Toronto, or the OI received a product key that
24 had been assigned for use by a QEU in connection with a fraudulent Academic Open license
25 agreement created by PST, or both. In each case, the product key provided to the OI has been
26 widely used to activate software hundreds of times in multiple countries. For each of the
27 purchases, the OI either received the product key by email, or was directed to

1 softwaresupporthub.com to receive the product key. In each case, the OI was provided with a
2 link to download unlicensed Microsoft software from the Internet. For many of the purchases,
3 the credit card payment was processed through billingsecurecenter.com or billing-secure-
4 server.com.

5 36. For example, in early December 2014, an OI conducted a test purchase of Office
6 Pro 2010 and Windows 8.1 Pro from amazingtechdeals.net. The site advertised the Office Pro
7 2010 software for \$94.98 and described it as "Full Retail Download." It advertised the
8 Windows 8.1 Pro software for \$66.99. The OI made a credit card payment through the website
9 and the merchant name was identified as Premier Technologies of Toronto, Canada. The
10 payment transaction was processed by billing-secure-server.com.

11 37. The Office Pro Plus 2010 product key sold by PST to the OI is assigned to an
12 Academic Open Agreement created in November 2014 in the name of an elementary school in
13 Ontario. PST is listed as the indirect academic reseller to the Ontario elementary school, which
14 is licensed under its agreement for five installations of Office Pro Plus 2013 Academic Edition.
15 This Office Pro Plus 2010 product key has been widely abused, with activations of software on
16 54 different devices, in seven countries, including 39 activations in the United States.

17 38. Similarly, on December 15, 2014, an OI conducted a test purchase of Office Pro
18 2013 and Windows 8.1 Pro from premiersellingtechnologies.org. The site advertised the Office
19 Pro 2013 software for \$519 and described it as "Retail Box." It advertised the Windows 8.1
20 Pro software for \$249.99; it was also described as "Retail Box." The OI made a credit card
21 payment through the website and the merchant name was identified as Premier Technologies of
22 Toronto, Canada. The payment transaction was processed by billingsecurecenter.com.

23 39. The Office Pro Plus 2013 product key sold by PST to the OI, is assigned to a
24 second Ontario elementary school under its Academic Open Agreement and License, both of
25 which were created on December 3, 2014. This Office Pro Plus 2013 product key has been
26 widely abused, activating software on 55 unique devices, in four different countries, including
27 50 software activations in the United States.

1 40. On information and belief, PST continues to advertise, market, offer, and
2 distribute its illegally acquired Microsoft product keys on these and possibly other websites to
3 this day. Based on Microsoft's investigation and test purchases, on information and belief, all
4 of the Microsoft software that PST is distributing is unlicensed and unauthorized.

5 **D. Microsoft's Software and Intellectual Property**

6 41. **Windows 8.1:** Microsoft has developed, advertises, markets, distributes, and
7 licenses a computer operating system called Microsoft Windows 8.1 ("Windows 8.1").
8 Microsoft holds a valid copyright in Windows 8.1 that was duly and properly registered with
9 the United States Copyright Office. A true and correct copy of the Registration Certificate for
10 Microsoft Windows 8.1, bearing the number TX 7-740-672, is attached as **Exhibit 1**.

11 42. **Windows 8:** Microsoft has developed, advertises, markets, distributes, and
12 licenses a computer operating system called Microsoft Windows 8 ("Windows 8"). Microsoft
13 holds a valid copyright in Windows 8 that was duly and properly registered with the United
14 States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft
15 Windows 8, bearing the number TX 7-601-008, is attached as **Exhibit 2**.

16 43. **Windows Vista Ultimate:** Microsoft has developed, advertises, markets,
17 distributes, and licenses a computer operating system called Microsoft Vista Ultimate
18 ("Windows Vista"). Microsoft holds a valid copyright in Windows Vista that was duly and
19 properly registered with the United States Copyright Office. A true and correct copy of the
20 Registration Certificate for Microsoft Windows Vista, bearing the number TX 6-508-905, is
21 attached as **Exhibit 3**.

22 44. **Windows 7:** Microsoft has developed, advertises, markets, distributes, and
23 licenses a computer operating system called Microsoft Windows 7 ("Windows 7"). Microsoft
24 holds a valid copyright in Windows 7 that was duly and properly registered with the United
25 States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft
26 Windows 7, bearing the number TX 7-009-361, is attached as **Exhibit 4**.

1 45. **Office 2013:** Microsoft has developed, advertises, markets, distributes, and
 2 licenses a suite of productivity software for business, home, and educational use called
 3 Microsoft Office 2013 (“Office 2013”). Office 2013 is available in a number of different
 4 versions, each of which includes certain combinations of products, programs, and features.
 5 Versions of Office 2013 include Office Professional 2013, Office Home and Business 2013,
 6 and Office Home and Student 2013. Microsoft holds a valid copyright in Office Professional
 7 2013, the most expansive version of Office 2013. As a result, Microsoft’s copyright in Office
 8 Professional 2013 encompasses all other versions of Office 2013. Microsoft’s copyright in
 9 Office Professional 2013 was duly and properly registered with the United States Copyright
 10 Office. A true and correct copy of the Registration Certificate for Microsoft Office
 11 Professional 2013, bearing the number TX 7-649-882, is attached as **Exhibit 5**.

12 46. **Office 2010:** Microsoft has developed, advertises, markets, distributes, and
 13 licenses a suite of productivity software for business, home, and educational use called
 14 Microsoft Office 2010 (“Office 2010”). Office 2010 is available in a number of different
 15 versions, each of which includes certain combinations of products, programs, and features.
 16 Versions of Office 2010 include Office Professional 2010, Office Home and Business 2010,
 17 and Office Home and Student 2010. Microsoft holds a valid copyright in Office Professional
 18 Plus 2010, the most expansive version of Office 2010. As a result, Microsoft’s copyright in
 19 Office Professional Plus 2010 encompasses all other versions of Office 2010. Microsoft’s
 20 copyright in Office Professional Plus 2010 was duly and properly registered with the United
 21 States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft
 22 Office Professional Plus 2010, bearing the number TX 7-151-840, is attached as **Exhibit 6**.

23 47. In connection with the above software titles, among others, Microsoft has also
 24 duly and properly registered a number of trademarks and service marks in the United States
 25 Patent and Trademark Office on the Principal Register, including without limitation:

26 (a) “MICROSOFT,” Trademark and Service Mark Registration No.

27 1,200,236, for computer programs and computer programming services;

- (b) WINDOWS, Trademark Registration No. 1,872,264 for computer programs and manuals sold as a unit;
- (c) WINDOWS VISTA, Trademark Registration No. 3,235,107 for computer operating system;
- (d) "FLAG DESIGN TWO (B/W)," Trademark Registration No. 2,738,877, for computer software;
- (e) "FLAG DESIGN TWO (COLOR)," Trademark Registration No. 2,744,843, for computer software;
- (f) "FLAG DESIGN (2012)," Trademark Registration No. 4,400,958, for computer software;
- (g) "CAMERA TILE," Trademark Registration No. 4,415,986, for computer software for accessing and managing camera functions;
- (h) "GAMES TILE," Trademark Registration No. 4,444,995, for computer software enabling access to online games;
- (i) "MAPS TILE," Trademark Registration No. 4,415,985, for computer software for mapping and directions;
- (j) "MESSAGING TILE," Trademark Registration No. 4,426,631, for computer software for text and multimedia messaging;
- (k) "MUSIC TILE," Trademark Registration No. 4,426,630, for computer software for downloading and listening to music and other audio content;
- (l) "SPORTS TILE," Trademark Registration No. 4,426,632, for computer software for viewing information and content about sports;
- (m) "VIDEO TILE," Trademark Registration No. 4,412,218, for computer software for downloading and viewing video content;
- (n) "WINDOWS STORE TILE," Trademark Registration No. 4,552,497, for operating system software, et al.;

- (o) "CHARM BAR," Trademark Registration No. 4,489,348, for computer operating system software, operating system programs, and graphical user interface software;
- (p) "MICROSOFT OFFICE," Trademark Registration No. 3,625,391, for computer productivity software;
- (q) OFFICE 2010 DESIGN, Trademark Registration No. 4,029,299, for computer productivity software;
- (r) OFFICE 2012 DESIGN, Trademark Registration No. 4,459,826, for computer productivity software;
- (s) "ACCESS," Trademark Registration No. 3,238,869, for computer database management software;
- (t) "ACCESS LAUNCH ICON (2012)," Trademark Registration No. 4,365,955, for computer database management software;
- (u) "ACCESS LAUNCH ICON (2010)," Trademark Registration No. 3,905,556, for computer database management software;
- (v) "EXCEL," Trademark Registration No. 2,942,050, for computer spreadsheet software;
- (w) "EXCEL LAUNCH ICON 2010," Trademark Registration No. 3,905,558, for computer spreadsheet software;
- (x) "EXCEL LAUNCH ICON 2012," Trademark Registration No. 4,355,451, for computer spreadsheet software;
- (y) "ONENOTE," Trademark Registration No. 2,844,710, for computer software for use in note taking;
- (z) "ONENOTE LAUNCH ICON 2010," Trademark Registration No. 3,905,559, for computer software for use in note taking;
- (aa) "ONENOTE LAUNCH ICON 2012," Trademark Registration No. 4,351,584, for computer software for use in note taking;

- 1 (bb) "OUTLOOK," Trademark Registration No. 2,188,125, for computer
2 programs for providing enhanced electronic mail and scheduling
3 capabilities;
- 4 (cc) "OUTLOOK LAUNCH ICON 2010," Trademark Registration No.
5 3,905,560, for computer programs for providing enhanced electronic
6 mail and scheduling capabilities;
- 7 (dd) "OUTLOOK LAUNCH ICON 2012," Trademark Registration No.
8 4,355,446, for computer programs for providing enhanced electronic
9 mail and scheduling capabilities;
- 10 (ee) "POWERPOINT," Trademark Registration No. 1,475,795, for computer
11 software programs for creating presentations, graphics and videos;
- 12 (ff) "POWERPOINT LAUNCH ICON 2010," Trademark Registration No.
13 3,905,561, for computer software programs for creating presentations,
14 graphics and videos;
- 15 (gg) "POWERPOINT LAUNCH ICON 2012," Trademark Registration No.
16 4,385,388, for computer software programs for creating presentations,
17 graphics and videos;
- 18 (hh) "PUBLISHER LAUNCH ICON 2010," Trademark Registration No.
19 3,909,142, for desktop publishing software;
- 20 (ii) "PUBLISHER LAUNCH ICON 2012," Trademark Registration No.
21 4,355,448, for desktop publishing software;
- 22 (jj) "WORD LAUNCH ICON 2010," Trademark Registration No.
23 3,909,143, for word processing software; and
- 24 (kk) "WORD LAUNCH ICON 2012," Trademark Registration No.
25 4,355,444, for word processing software.

26 True and correct copies of the Trademark Registrations for (a) through (jj) above are attached
27 as **Exhibits 7** through **43**, respectively.

V. CAUSES OF ACTION

First Claim

Racketeering Influenced and Corrupt Organization – 18 U.S.C. § 1964

48. Defendants have engaged, and are continuing to engage, in a pattern of racketeering influenced and corrupt organization activity as defined by 18 U.S.C. § 1961 *et seq.* to conduct or participate, directly or indirectly, in PST and its affiliates' affairs, which affect interstate or foreign commerce. In particular, Defendants have engaged, and are continuing to engage, jointly and individually, in at least two predicate acts of wire fraud indictable under 18 U.S.C. § 1343 within ten years after the commission of a prior act of wire fraud.

49. As described above, Defendants devised a scheme or artifice to obtain Microsoft product keys by means of false or fraudulent pretenses, representations, and/or promises. As an integral and necessary part of the scheme, Defendants transmitted, and continue to transmit, by means of wire in interstate or foreign commerce, writings, signs, signals, pictures, and/or sounds for the purpose of executing such scheme of artifice. These include, but are not limited to, any and all electronic communications from Defendants relating to their AER contract and the creation of Academic Open Licenses under the assumed school names pursuant to such contract.

50. As a result of Defendants' wrongful conduct, Microsoft has been injured and is entitled to recover threefold its actual damages and the cost of this suit, including its attorney fees, pursuant to 18 U.S.C. § 1964(c).

Second Claim

Common Law Fraud and Fraudulent Misrepresentation

51. By submitting Academic Open License agreements with various Canadian QEU's to Microsoft, PST and its primary contact, Defendant Romero, represented to Microsoft that those schools purchased Microsoft software for use in their institutions.

52. Through these representations, PST and Defendant Romero intentionally induced Microsoft to assign software product keys to the relevant Canadian schools. Microsoft relied on PST's fraudulent Academic Open license documentation and would not have assigned

1 these product keys without the agreements purportedly entered into between PST and the
2 Canadian QEU's.

3 53. On information and belief, PST and Defendant Romero did not create the
4 Academic Open License agreements for the benefit of the Canadian QEU's; rather, they created
5 them for the purpose of accessing and misappropriating product keys for commercial
6 distribution.

7 54. Under Microsoft MPN and AER Agreements with PST, PST and its directors,
8 officers, and employees were responsible for ensuring that purchasers of Microsoft Academic
9 Edition software were qualified to purchase Microsoft software at the academic discounted
10 prices, i.e. were QEU's.

11 55. As a result of PST's wrongful conduct, carried out by and through PST's
12 directors, officers, and employees, Microsoft has been injured and is entitled to recover its
13 actual damages, in an amount to be proved at trial.

14 **Third Claim**
15 **Civil Conspiracy**

16 56. Defendants engaged in an unlawful conspiracy to commit the unlawful acts
17 alleged herein. Defendants engaged in this conspiracy to accomplish an unlawful purpose or to
18 accomplish a lawful purpose by unlawful means.

19 57. Each and all of the Defendants took affirmative steps in furtherance of the
20 conspiracy as described herein. Because of the active steps taken by Defendants to conceal
21 their identities and roles in the unlawful conducts described herein, the individual acts and steps
22 taken by each Defendant in furtherance of the conspiracy is peculiarly within their knowledge.

23 58. As a result of this unlawful civil conspiracy, Microsoft has suffered damages in
24 an amount to be proved at trial.

Fourth Claim

Contributory Copyright Infringement - 17 U.S.C. § 501 *et seq.*

59. Microsoft is the sole owner of Microsoft Windows 8.1, Windows 8, Windows Vista, Windows 7, Office 2013, and Office 2010, and of the corresponding copyrights and Certificates of Registration with the registration numbers listed above.

60. Defendants have induced, caused, and materially contributed to the infringement of those copyrights. Specifically, Defendants have represented to unsuspecting third-party purchasers that they are purchasing licensed Microsoft products from Defendants. Instead, on information and belief, Defendants have sold their customers unlicensed software and have instructed them to install it with product keys that neither the customers, nor Defendants, are authorized to use.

61. As a result of Defendants' instruction and material assistance, those third-party purchasers have impermissibly, albeit presumably unwittingly, copied Microsoft's protected works, infringing Microsoft's rights in those works.

62. At all times, Defendants knew of and intentionally contributed to and furthered the infringing activity.

63. At a minimum, Defendants acted with willful blindness to, or in reckless disregard of, Microsoft's registered copyrights.

64. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its actual damages and Defendants' profits attributable to the infringement. Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

65. The award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

66. Microsoft is further entitled to injunctive relief and an order impounding all infringing materials. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's copyrights are unique and valuable property which have no readily determinable market value; (b) Defendants' infringement harms

1 Microsoft such that Microsoft could not be made whole by any monetary award; and (c)
2 Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

3 **Fifth Claim**

4 **Unfair Competition & False Advertising – 15 U.S.C. § 1125(a)**

5 67. Defendants have made false and misleading representations and descriptions of
6 fact in connection with the offering for sale and sale of unlicensed Microsoft software through
7 their websites, including without limitation, that Defendants are offering licensed Microsoft
8 software.

9 68. Defendants' false and misleading representations and descriptions of fact were
10 made in commercial advertising or promotion, including without limitation, in connection with
11 the offering for sale and sale of unlicensed Microsoft software through their websites.

12 69. Defendants' false and misleading representations and descriptions of fact
13 misrepresent the nature, characteristics, qualities, or origin of their goods, services, and
14 commercial activities.

15 70. Defendants' use of Microsoft's trademarks and service mark referenced above
16 and its false and misleading representations and descriptions of fact in interstate commerce in
17 connection with its offering for sale of unlicensed Microsoft software has either deceived or has
18 the capacity to deceive a substantial segment of potential consumers, and such deception is
19 material, in that it is likely to influence the consumers' purchasing decisions.

20 71. Defendants have used, and continue to use, Microsoft's trademarks and service
21 mark referenced above to compete unfairly with Microsoft and to deceive customers.

22 72. Defendants' conduct constitutes false advertising and federal unfair competition,
23 in violation of 15 U.S.C. § 1125(a).

24 73. Defendants' wrongful conduct is likely to continue unless restrained and
25 enjoined.
26
27

82. On information and belief, Defendants hold the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced. All such money and profits, in whatever form, are held by Defendants as a constructive trustee for Microsoft.

Eight Claim **Accounting**

83. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendants that are attributable to the acts of infringement.

84. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of Defendants' acts of infringement.

85. The amount of money due from Defendants to Microsoft is unknown to Microsoft and cannot be ascertained without a detailed accounting by Defendants of the precise number of units of infringing material advertised, marketed, installed, offered, or distributed by Defendants.

VI. PRAYER FOR RELIEF

WHEREFORE, Microsoft respectfully prays for the following relief:

A. That the Court enter judgment in Microsoft's favor on all claims;

B. That the Court restrain and enjoin Defendants, their directors, principals, officers, agents, representatives, employees, attorneys, successors and assigns, and all others in active concert or participation with it, from:

(i) copying or making any other infringing use or infringing distribution of Microsoft's software and other intellectual property including but not limited to the software identified by the Trademark, Service Mark, and Copyright Registration Numbers listed above;

(ii) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any Microsoft software or other intellectual property bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered

1 trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service
2 Mark, and Copyright Registration Numbers listed above;

3 (iii) using any simulation, reproduction, counterfeit, copy, or colorable
4 imitation of Microsoft's registered trademarks, service mark, or copyright including, but not
5 limited to the Trademark, Service Mark, and Copyright Registration Numbers listed above, in
6 connection with the manufacture, assembly, production, distribution, offering for distribution,
7 circulation, sale, offering for sale, import, advertisement, promotion, or display of any
8 software, component, and/or other item not authorized or licensed by Microsoft;

9 (iv) engaging in any other activity constituting an infringement of any of
10 Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to
11 use or to exploit, these trademarks, service mark, and/or copyrights; and

12 (v) assisting, aiding, abetting, inducing, causing, or materially contributing
13 to any other person or business entity in engaging in or performing any of the activities listed
14 above;

15 C. That the Court enter an order pursuant to 15 U.S.C. § 1116 and 17 U.S.C. § 503
16 impounding all counterfeit and infringing copies of purported Microsoft software and/or
17 materials bearing any of Microsoft's trademarks or service mark, and any related item—
18 including without limitation business records, product keys, and download links—that are in
19 Defendants' possession or under their control;

20 D. That the Court enter an order declaring that Defendants hold in trust, as
21 constructive trustees for the benefit of Microsoft, the illegal profits obtained from their
22 distribution of counterfeit and infringing copies of Microsoft's software, and requiring
23 Defendants to provide Microsoft a full and complete accounting of all amounts due and owing
24 to Microsoft as a result of Defendants' unlawful activities;

25 E. That Defendants be required to pay all general, special, actual, and statutory
26 damages which Microsoft has sustained, or will sustain, as a consequence of Defendants'
27

1 unlawful acts, and that such damages be enhanced, doubled, or trebled as provided for by 17
2 U.S.C. § 504(c), 15 U.S.C. § 1117(b) and 18 U.S.C. § 1964(c);

3 F. That Defendants be required to pay to Microsoft both the costs of this action and
4 the reasonable attorney fees incurred by Microsoft in prosecuting this action, as provided for by
5 15 U.S.C. § 1117, 17 U.S.C. § 505 and 18 U.S.C. § 1964(c); and

6 G. That the Court grant Microsoft such other, further, and additional relief as the
7 Court deems just and equitable.

8 DATED this 25th day of March, 2015.

9 DAVIS WRIGHT TREMAINE LLP
10 *Attorneys for Plaintiff Microsoft Corp.*

11 By s/ Candice M. Tewell
Candice M. Tewell, WSBA # 41131

12 By s/ James Harlan Corning
13 James Harlan Corning, WSBA # 45177
14 1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
15 Tel: (206) 622-3150
Fax: (206) 757-7700
16 Email: candicetewell@dwt.com
jamescorning@dwt.com